

## Article 6 – Procedures for Map and Text Amendments, Variances, Special Exceptions, and Administrative Actions

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### 25.06.01 – Zoning Map Amendments

- a. *Compliance Required* - The zoning map cannot be amended except in compliance with the procedures set forth in this Article and other applicable law.
- b. *Types of Applications* – An application may be filed for any of the following types of amendment to the zoning map:
  1. *Local Amendment* – A local map amendment covering a single tract of land, all portions of which are proposed to be classified in one (1) or more zones;
  2. *Sectional Amendment* – A sectional map amendment covering a section of the City, portions of which may be proposed to be classified in different zones; or
  3. *Comprehensive Amendment* – A comprehensive map amendment covering the entire City, portions of which may be proposed to be classified in different zones.
- c. *Applications*
  1. *Authority to File*
    - (a) *Local Map Amendment* – An application for a local map amendment ~~to the zoning map~~ may be ~~made~~ filed by any governmental agency or by a person with a financial, contractual, or proprietary interest in the property to be affected by the proposed amendment.
    - (b) *Sectional and Comprehensive Amendment* – An application for a sectional or comprehensive map amendment may be ~~made~~ filed only by the Planning Commission or the Mayor and Council.
  2. *Submission*
    - (a) *General Requirements* - An application for an amendment to the zoning map must be submitted to the City Clerk on forms approved by the Chief of Planning, and be accompanied by such fee as is determined by resolution of the Mayor and Council.
    - (b) *Complete Application* - The application will not be deemed to be complete until all submission requirements have been met.

d. *Local Amendment Applications*

1. *Limitation on Successive Applications* – The City Clerk must not accept for filing any application for a local amendment to the zoning map if the application is for the reclassification of the whole or any part of land, the reclassification of which has been approved or denied by the Mayor and Council on its merits within 12 months prior to the date of the application for filing.
2. *Limitation on Amendments to Applications* – After acceptance for filing, an application for a local amendment to the zoning map may not be amended so as to increase the area proposed to be reclassified or to change the zone or alternate zones requested to any other zone.

e. *Public Notification of Pending Application*

1. *Notification Requirements* – Notice required under this Section must be given in accordance with the provisions of the notice requirements found in Section 25.05.03.
2. *Newspaper Notification* – Publication in a newspaper of general circulation is required prior to a hearing in accordance with the requirements of State law.
3. *Sign Required* – In the case of a local amendment, the owners of the subject property must post a sign or signs in accordance with the provisions of Section 25.05.03.d.
4. *Written Notification to Property Owners* – At least 15 days prior to the hearing on any application for a local or sectional amendment to the zoning map, the City Clerk must send written notice of such ~~the~~ hearing by certified mail to:
  - (a) *Local Amendment* – In the case of a local amendment, the owners of all real property within 500 feet of the subject property.
  - (b) *Sectional Amendment* – In the case of a sectional amendment, the owners of all real property within the delineated area of such application, and the owners of all real property within 500 feet of any property within such area.
  - (c) *Comprehensive Amendment* – In the case of a comprehensive City-wide map amendment, mailed notice is not required.

- f. *Access to Application Files* – Access to application files under this Section is subject to the provisions found in Section 25.05.05.
- g. *Referring Application to the Planning Commission* – Within five (5) days after acceptance of any application under this Section, the Clerk must transmit a copy of the application to the Planning Commission. The Commission may submit a written recommendation which will be placed in the application file by the Clerk and become a part of the record on the application.
- h. *Hearing on Application* – No application made under this Section may be granted unless a public hearing has been held on the application by the Mayor and Council in accordance with the requirements of State law.
- i. *Action on Application*
  - 1. An application may be granted by ordinance or denied, dismissed, or allowed to be withdrawn by resolution of the Mayor and Council.
  - 2. An application may be dismissed if the Mayor and Council finds that it does not comply with any procedural requirements of this Chapter or other applicable law.
- j. *Withdrawal of Application* – An application for a local map amendment for which a public hearing has been conducted may be withdrawn only with the approval of the Mayor and Council. The Mayor and Council may decline to permit the withdrawal and decide the application on its merits or may permit withdrawal subject to any reasonable condition including but not limited to, the imposition of a time limitation within which no subsequent application may be filed, the limitation not to exceed three (3) years.
- k. ~~*Modification*~~ – ~~Modification of a pending application for a local map amendment is subject to the provisions of Section 25.05.04.~~
- l. *Notification of Decision and Appeal*
  - 1. Notification of decisions must be in accordance with Section 25.05.06.
  - 2. The time limitation for appeals will run from the date of the ordinance ~~or resolution~~ adopted by the Mayor and Council.

## 25.06.02 – Text Amendments

- a. *Scope* – No provision of this Chapter which directly affects property can be amended except in compliance with the procedures set forth in this Article and any other applicable law.
- b. *Applications*
  1. *Authority to File* – An application for an amendment to the text of this Chapter may be made by any interested person or governmental agency.
  2. *Submission*
    - (a) An application for an amendment to the text of this Chapter must be submitted to the City Clerk.
    - (b) An application for a text amendment must be submitted on forms approved by the Chief of Planning and be accompanied by such fee as is determined by resolution of the Mayor and Council. All information specified on such forms must be supplied.
    - (c) The time limits specified in this Chapter will commence when all submission requirements are met as determined by the Chief of Planning.
- c. *Public Notification of Pending Application* – Publication in a newspaper of general circulation is required prior to any hearing on a zoning text amendment application, in accordance with State law.
- d. *Referring Application to the Planning Commission*
  1. *Clerk Responsibility* - Within five (5) days after acceptance of any text amendment application ~~under this Section~~, the Clerk must transmit a copy of the application to the Planning Commission. The Commission may submit a written recommendation to the Mayor and Council, which will be placed in the application file by the Clerk and become a part of the record on the application.
  2. *Hearing before Planning Commission Required for Article 21 Amendment* – Prior to submitting its recommendation of any proposed amendment to Article 21, “Subdivisions”, the Planning Commission must hold a public hearing on the application in accordance with the requirements of State law relating to proposed subdivision regulations.

- e. *Access to Application Files* – Access to application files under this Section is subject to the provisions found in Section 25.05.05.
- f. *Hearing on Application* – No application made under this Section may be granted unless a public hearing has been held on the application by the Mayor and Council in accordance with the requirements of State law.
- g. *Action on Application*
  - 1. A text amendment application may be granted by ordinance or denied, dismissed, or allowed to be withdrawn by resolution of the Mayor and Council.
  - 2. A text amendment application may be dismissed if the Mayor and Council finds that it does not comply with any procedural requirements of this Chapter or other applicable law.
- h. *Withdrawal of Application* – An application for a text amendment for which a public hearing has been conducted may be withdrawn only with the approval of the Mayor and Council.
- i. ~~*Modification* – Modification of a pending application for a text amendment is subject to the provisions of Section 25.05.04.~~

### **25.06.03 – Variances**

- a. *Scope* – Variances may be granted by the Board of Appeals from the strict application of density, bulk, or area requirements in this Chapter.
- b. *Application* – Applications for variances must be submitted in accordance with the provisions of Article 5.
- c. *Public Notification of Pending Application* – Written notice of a pending variance application must be provided in accordance with the provisions of Section 25.05.03.c and d.
- d. *Referring Application to the Planning Commission* – Within five (5) days after acceptance of any application under this Section, the Chief of Planning must transmit a copy of the application to the Planning Commission. The Commission may submit a written recommendation to the Board of Appeals which will be placed in the application file by the Chief of Planning and become a part of the record on the application.

- e. *Hearings* – A hearing must be held by the Board of Appeals in accordance with provisions of this Chapter and the Rules of Procedure for the Board.
- f. *Findings* – A variance may be approved by the Board of Appeals if it finds that:
  - 1. The variance would not be contrary to the public interest;
  - 2. The request for the variance is the result of conditions peculiar to the property and not the result of any action taken by the applicant;
  - 3. Literal application of this ordinance would result in practical difficulty; and
  - 4. The approval of the variance is generally not inconsistent with the purposes of this Chapter.
- g. *Conditions* – In approving a variance, the Board of Appeals may impose terms, conditions, and restrictions that are reasonably necessary to protect adjacent properties, the neighborhood, and the residents and workers therein.
- h. *Notice of Decisions* – Notice of a decision of the Board of Appeals must be given in accordance with Section 25.05.06.
- i. *Term of Approval* – The approval of a variance by the Board of Appeals is subject to the provisions of Section 25.04.03.fg, "Expiration of Board's Approval of Special Exceptions and Variances."
- j. *Violations* – Whenever, in the opinion of the Chief of Planning, there has been a violation of any terms, conditions, or restrictions upon which a variance was granted, the Chief of Planning will establish a date for a public hearing by the Board of Appeals to determine whether or not a violation has occurred and if the variance should be revoked.
- k. *Zoning Map Indication* – The grant of a variance shall be noted upon the Zoning Map.

#### **25.06.04 – Special Exceptions**

Special exceptions are subject to the procedural requirements of Article 7 and all applicable requirements of Article 15.

- a. ~~*Scope* – Special exceptions may be granted by the Board of Appeals in accordance with the requirements in this Chapter.~~

- ~~b. *Application*—Applications for special exceptions must be submitted in accordance with the provisions of Article 5.~~
- ~~c. *Public Notification of Pending Application*—Written notice of a pending special exception application must be provided in accordance with the provisions of Section 25.05.03.c and d.~~
- ~~d. *Referring Application to the Planning Commission*—Within five (5) days after acceptance of any application under this Section, the Chief of Planning must transmit a copy of the application to the Planning Commission. The Planning Commission may, at the request of the Board or on its own initiative, request that the Commission submit a written recommendation on the special exception, based on the compliance of the special exception with the Plan. If a recommendation is made, it must be placed in the application file by the Chief of Planning and become a part of the record on the application.~~
- ~~e. *Hearings*—A hearing must be held by the Board of Appeals in accordance with the Rules of Procedure for the Board.~~
- ~~f. *Findings*—The Board of Appeals must not grant any petition for a special exception unless it finds that the requirements of 25.15.01.a.3 have been met. The Board of Appeals must not grant any petition for a special exception unless it finds from a preponderance of the evidence of record that all of the following requirements have been met:~~
  - ~~1. The proposed use does not violate or adversely affect the Plan, this Chapter or any other applicable law.~~
  - ~~2. The proposed use at the location selected will not:~~
    - ~~(a) Adversely affect the health and safety of residents or workers in the area;~~
    - ~~(b) Overburden existing and programmed public facilities as provided in this Chapter and in the adopted Adequate Public Facilities standards;~~
    - ~~(c) Overburden existing and programmed storm drainage and other public improvements;~~
    - ~~(d) Create any additional pollution, waste stream, or environmental nuisance;~~
    - ~~(e) Be detrimental to the use or development of adjacent properties or the neighborhood; and~~

- ~~(f) Change the character of the neighborhood in which the use is proposed considering service currently required, population density, character, and number of similar uses.~~
- ~~3. The proposed use complies with all other applicable requirements of this Chapter as set forth in Articles 10-14.~~
- ~~4. The approval of the special exception is generally consistent with the purposes of this Chapter.~~
- ~~g. Conditions — The Board of Appeals may impose such terms, conditions, and restrictions upon the grant of a special exception that are reasonably necessary to protect adjacent properties, the neighborhood, and the residents and workers therein.~~
- ~~h. Term of Approval — The approval of a special exception by the Board of Appeals is subject to the provisions of Section 25.04.03.f g, "Expiration of Board's Approval of Special Exceptions and Variances."~~
- ~~i. Zoning Map Indication — The grant of a special exception shall be noted upon the Zoning Map.~~

#### **25.06.05 – Administrative Interpretation**

- a. The Chief of Planning has final interpretation authority on all provisions of this Chapter.
- b. Such interpretations must be recorded and kept on file for public viewing in accordance with Section 25.05.05.
- c. An interpretation by the Chief of Planning may be appealed in accordance with Section 25.04.06.c.

#### **25.06.06 – Administrative Adjustments**

- a. *Purpose and Authority* – The Chief of Planning is authorized to determine and make administrative adjustments of this Chapter in harmony with its general purpose and intent provided in Section 25.01.02, only:
  - 1. In the specific instances set forth in this Section 25.06.06; and
  - 2. Where the Chief of Planning makes findings of fact in accordance with the standards prescribed in this Section.



- b. *Permitted Administrative Adjustments* – Administrative adjustments from the regulations of this Chapter may be granted by the Chief of Planning only in Low Density Residential Zones, in accordance with the criteria established in this Section, and may be granted only for the following:
  - 1. *Setbacks* – To reduce the required yard setback by no more than ten percent 10%.
  - 2. *Lot Coverage* – To decrease the lot coverage and ~~vegetative covering restrictions~~ landscaping requirements by no more than ten percent (10%).
- c. *Application* – Applications for administrative adjustments must be submitted in accordance with the provisions of Article 5, including but not limited to, amendments, notice of decisions, and appeals of decisions.
- d. *Public Notification of Pending Application* – A sign must be posted on the property that is the subject of the application in accordance with the requirements in Section 25.05.03.d.
- e. *Review Procedures* – The following procedures apply to the review and consideration of an application for an administrative adjustment:
  - 1. *Staff Review* – The Chief of Planning, after having determined that the submission is complete, will distribute copies of the application to appropriate City departments for review.
  - 2. *Staff Report* – Any City department reviewing the application will prepare a staff report on the application and transmit the staff report to the Chief of Planning.
  - 3. *Public Meeting* – The Chief of Planning must hold a public meeting on each application if an objection to the application is raised.
    - (a) *Notice* – Written notice must be provided by the Chief of Planning in accordance with the provisions of Section 25.05.03.c.
    - (b) *Meeting Procedure* – The following provisions apply to public meetings:
      - (i) *Right to be Heard* – Parties in interest and citizens must have an opportunity to be heard at such public meeting.

(ii) *Registration Requirement* – Any person desiring to be heard at any public meeting must register his or her appearance with the Chief of Planning, in writing, by providing his or her name, address, telephone number, and person represented, if any. A person can register his or her appearance at any time prior to the conclusion of the ~~hearing~~ public meeting. Any person who fails to register as required is not a party of record at such ~~hearing~~ public meeting.

(c) *Contents of Record* – The Chief of Planning must promptly include in the application file a list of those persons registering their appearance, who become parties of record. Such list will become part of the official record of the proceedings.

(d) *Adjournment of Meeting* – The meeting may be adjourned from time to time to a date certain on public announcement at the meeting of the date, time, and place for resumption of such hearing.

#### 4. *Action on Application*

(a) Within 30 days of the conclusion of the public meeting, the Chief of Planning must decide to:

(i) Approve the application;

(ii) Approve the application subject to specific conditions; or

(iii) Deny the application.

(b) The Chief of Planning's decision must be based on written findings of fact in accordance with this Section and may impose such conditions or restrictions upon the premises benefited by an administrative adjustment as may be necessary to comply with the intent and purposes of the standard or other requirement that is adjusted.

5. *Notice of Decision* – The Chief of Planning must send notice of the decision in accordance with the provisions of Section 25.05.06.

f. *Review Criteria and Findings* – An administrative adjustment may not be granted unless the Chief of Planning makes the following findings based upon the evidence of record:

1. *Good Cause Shown* – The applicant has shown good cause for granting the administrative adjustment.

2. *Public Safety and Welfare* – The granting of the adjustment will not be detrimental to the public safety or welfare or injurious to other property or improvements in the neighborhood in which the property is located.
3. *Total Cumulative Adjustment* - The total cumulative adjustment to the regulation that is the subject of the application does not exceed ten percent (10%). This total cumulative adjustment is to be considered in connection with all adjustments made to the applicable property and not solely to the adjustments in connection with any single application for adjustment.

**25.06.07 - Failure to Comply with Terms, Conditions, and Restrictions**

- a. If the Chief of Planning has reason to believe that any of the terms, conditions, or restrictions upon which an application was granted have not been complied with, the Chief of Planning may take the following actions:
  1. Provide written notice by first class mail to the owner of the use or structure to which the term, condition, or restriction pertains, the owner of the property on which the use or structure is located, the owners of all properties within a radius of at least 500 feet of the lot boundaries of the use or structure or larger area if determined to be necessary by the Chief of Planning, and all parties of record in the proceedings that resulted in the approval of the use or structure, that a public meeting or public hearing (if a public hearing was required prior to approval) will be held by the Approving Authority that granted the original approval to which the terms, conditions, or restrictions were applied to determine if a violation has occurred; and
  2. Post a sign on the site as provided in Article 5.
- b. If following the public hearing the Approving Authority determines, based on the public record, that a violation has occurred, the Approving Authority is authorized to suspend or revoke the grant of such approval or take other action it deems necessary to assure compliance with the terms, conditions, and restrictions of the approval.

